The spirit in which this work is conceived and the unwillingness of the author to confine himself to fixed theories may be illustrated by the following quotation:

"It was readily believed in former times that the victorious Barbarians had ruined the Roman world. The Count De Boulainvilliers in 1727 adopted this opinion in order to justify the privileges of the nobles whom he recognized as the descendants of the conquering race. The Abbé Dubos in 1734, making himself the organ of the third estate against the nobility, answered him by saying that there had been no conquest but only a peaceful establishment. Montesquieu attempted to take a middle ground between these two extreme opinions. In our day the question is still discussed; there is as yet no agreement either as to the immediate consequences, nor as to the remote results of the invasions. For the Germanists, it was an event which regenerated society. The Romanists consider it an accident which did not sensibly modify the course of events. They seek to discover in the decadence of Rome the beginnings of the feudal world. The truth is the invasion was not a single act" (p. 61).

The author seems to share in many respects the views of that most brilliant and erudite of French writers on Ancient Legal Institutions Fustel de Coulanges whose fascinating book on "L'Invasion Germanique" cannot be too highly recommended to the American student.

The author continues to develop the various changes through the long period of Monarchical administrative centralization and the growth of the Parliament of Paris and the local Parliaments.

He gives a rather full account of the hopelessly confused and unscientific fiscal system which, perhaps, contributed more than any cause to the breakdown of the Monarchy and the disasters of the Revolution. He carries the work down to the Revolution and gives a somewhat too short sketch of the Revolutionary period, the political theories preceding it and the economic changes due thereto and reacting thereon.

The work is divided into short paragraphs and has full notes. No attempt is made at anything like a philosophic treatment of any of the topics and it is indeed rather a text book than a full treatise, but it is well done and would serve as a complete introduction to anyone wishing to make a full study of French public law and institutions. To one who has not time for further examination, it will give a sane and excellent bird's-eye view of the institutions of a country whose influence has been in so many respects more potent throughout the world than that of any other nation and from which America has received much.

Frederic R. Coudert.

VALIDITY OF RATE REGULATIONS. By ROBERT P. REEDER. Philadelphia: T. & J. W. JOHNSON Co. 1914. pp. 440.

The title of this little work is something of a misnomer. It might more accurately, if not more happily, have been styled: "A Consideration of various Provisions of the Federal Constitution, with particular Reference to their Application to the Regulation of Rates." For most of it is devoted to a general discussion of constitutional principles whose bearing upon the specific problems of rate regulation is decidedly remote.

This is not said in condemnation of Mr. Reeder's work. While his criticism of certain accepted canons of constitutional construction

might find more appropriate and permanent place in a general treatise upon constitutional law, much of it is of distinct value, and adds materially to the general reader's interest in a somewhat esoteric subject.

This general discussion is largely an attack upon two positions and one tendency of the Supreme Court. The writer's first objective is the doctrine that under the commerce clause certain subjects are withdrawn entirely from State regulation and confided exclusively to Congress, as requiring uniform rules. It seems a little late to assail this well settled principle. It is obviously true, as the author asserts, that nothing in the language of the commerce clause supports the position "that the power of Congress is bifurcated" (p. 6). But the Constitution, like other documents, is not to be (nor ever has been) interpreted solely by the letter: the doctrine of latent ambiguities has a part to play if the sacred instrument is not to become an unendurable burden. Mr. Reeder might well have heeded here the dictum, later cited by him with approval, that a court "cannot carry out a constitution with mathematical nicety to logical extremes" (p. 375).

The same criticism applies to Mr. Reeder's attitude toward delegations of legislative power—that the court has erred in supporting the delegation of discretionary powers to administrative bodies. While in strict logic any such delegation may be of the power to legislate, the consistent application of such a test would hamper intolerably the task of government under our Constitution. The author seems to sense this fact when he draws the line of demarcation between grants of discretion "not great" and "larger grants" of discretionary power (p. 95).

When Mr. Reeder attacks the accepted interpretation of the "due process" clause as a restriction upon substantive as well as procedural changes in the common law, he is upon firmer ground. With deadly deliberation he demolishes one by one the conventional arguments advanced in its favor, and shows almost conclusively (as it seems to the unlearned reviewer) that "due process of law" in its inception was nothing more than "the law of the land" of Magna Carta, had to do only with procedure, and was never designed to restrict legislative changes of procedure nor, *a fortiori*, of substantive law; that no sound reason has been advanced for assigning to it a different meaning in American constitutions; and hence, that the "inalienable", "fundamental", and "natural rights" which the courts have read into the clause have no foundation in legal history, but are mainly the outgrowth of an obsolete political philosophy. The States' residuary power of legislation, he points out, is absolute save as limited by express constitutional prohibition; so that the courts, in applying the tests of reasonableness or necessity to its exercise, are really usurping a legislative function.

A wealth of material, historical and critical as well as judicial, is cited in support of this position. The only doubt which the argument raises is whether the thing was worth doing so thoroughly in a work on rate regulation. Surely, there is little ground for hoping with Mr. Reeder that the Supreme Court will yet reverse itself upon this point. If ever a rule of construction has become embedded in the written law and part of it by long use, this rule has. It would have been more profitable, one feels, to emphasize the more liberal present trend of the courts, and their growing inclination to leave questions of expediency to the legislature. When courts adhere strictly to the

principle that any statute is due process which is reasonably adapted to accomplish an object within the legislature's proper scope, there will be no practical objection to their occasional veto of legislation; and empirical rather than historical tests are what ultimately count in affairs of government. Certainly Mr. Reeder has dwelt too long on this interesting theme, giving up to it 75 pages out of the 137 devoted to the due process clause. His style is partly to blame for this. It is frequently redundant, and occasional repetition of the same argument in slightly varied form obscures the thread of his discourse.

The portion dealing directly with the constitutional problems of rate regulation is not open to this charge. On the contrary, it suffers in spots from undue compression, leaving in consequence an occasional sense of incompleteness and, more rarely, of downright inaccuracy. This is most noticeable in the last chapter, dealing with "Limitations upon Federal Judicial Power." The *Debs* case, for example, is summarized by the sweeping statement that "Federal courts may also enjoin the commission of crimes and then punish their commission without trial by jury" (p. 362). A fuller discussion of the provisions against self-incrimination and unreasonable searches and seizures would have been helpful. The treatment of the latter provision seems particularly inadequate. In view of the ever increasing demands of the Interstate Commerce Commission for unlimited access to the books and papers of carriers (see *United States* v. *Louisville & Nashville R. R.* 236 U. S. 318), this provision presents the most acute and least settled problems in this whole field.

These, however, are minor and exceptional defects. In the main, the exposition of this branch of law, still in its formative period and unfamiliar to the average practitioner, is concise but clear, with sufficient discussion of mooted and hypothetical points to enable the reader at least to tackle a new question intelligently. The footnotes deserve a word to themselves. They must contain nearly all the relevant authorities—over 1700 cases are cited, as well as numerous textbooks, special articles, etc.—and should be of great assistance to the brief-writer; while the minute and often searching comments scattered through them show that they are not the mere compilation of some office assistant. One shudders at the drudgery implied, but is frankly grateful for the result.

Mr. Reeder has performed a useful task with credit, if not quite with distinction.

Karl W. Kirchwey.

BENDER'S WAR REVENUE LAW OF 1914. BY THE PUBLISHERS' EDITORIAL STAFF. Albany: MATTHEW BENDER & Co. 1914. pp. xxviii, 181.

Twenty-two pages of the book are devoted to introductory and general remarks, a general table of similar statutes, and an outline of the Internal Revenue Laws in general. These pages are of some interest, but there is nothing in the balance of the book that cannot be had as satisfactorily and more completely in the digests and in the official treasury decisions. The fault is not the author's. Of all the creations of the legislative mind there is probably none more arid of general principle than taxing laws of this type. They are constructed on no particular principle except that the government needs the money, and are a mere agglomeration of unrelated specific impositions.

Except for the taxes on beer, wines and other liquors, which afford scope for a specific treatise by a specialist, and the tax on perfumes